

IN THE SUPREME COURT OF THE
STATE OF OREGON

MARCO ANTONIO MONTEZ,
Petitioner on Review,

v.

Stanley CZERNIAK,
Superintendent,
Oregon State Penitentiary,
Respondent on Review.

(CC 97C12376; CA A130258; SC S059138)

On petitioner on review's petition for reconsideration filed April 22, 2014.

Daniel J. Casey, Portland, filed the petition for reconsideration.

No appearance *contra*.

Before Balmer, Chief Justice, Walters and Baldwin, Justices, and Riggs and Durham, Senior Judges, Justices *pro tempore*.**

PER CURIAM

The petition for reconsideration is allowed. The former opinion is modified and adhered to as modified.

* Appeal from Marion County Circuit Court, Don Dickey, Judge. 237 Or App 276, 239 P3d 1023 (2010).

** Kistler, Linder, Landau, and Brewer, JJ., did not participate in the consideration or decision of this case.

PER CURIAM

Petitioner seeks reconsideration of this court's decision in [*Montez v. Czerniak*](#), 355 Or 1, 322 P3d 487 (2014), a post-conviction relief case in which we affirmed both the Court of Appeals decision and the post-conviction judgment below. In seeking reconsideration, petitioner takes exception to our holding as to the disclosure of petitioner's previous death sentence at his penalty phase retrial, as well as various aspects of our analysis regarding omitted expert mitigation evidence. With regard to those arguments, we affirm our previous decision without further discussion.

Petitioner has correctly noted, however, that our opinion misidentified Kenneth McPhail as an inmate witness who testified on petitioner's behalf at the Multnomah County Circuit Court. *See Montez v. Czerniak*, 355 Or at 29 n 8 ("Eight inmates testified for petitioner and all did so at the penitentiary except for Kenneth McPhail, whose testimony was taken at the Multnomah County Circuit Court.") That identification was incorrect; the record shows that the inmate who testified in Multnomah County Circuit Court was, in fact, Michael McDonnell. Accordingly, we allow this petition for reconsideration and modify our decision to correct that error.

The petition for reconsideration is allowed. The former opinion is modified and adhered to as modified.